

1  
2  
3  
4  
5  
6  
7  
8  
9  
10 **UNITED STATES DISTRICT COURT**  
11 **SOUTHERN DISTRICT OF CALIFORNIA**  
12

13 YVONNE DALTON, DIAN GARZA,  
14 ARMINDA GUZMAN, HARON  
15 HUGHEN, ETELVINA SALGADO,  
16 HECTOR MIGUEL SALGADO,  
17 REFUGIO SANCHEZ and LUISA  
18 RAMIREZ FLORES, individually and  
19 on behalf of all others similarly situated,  
20 Plaintiffs,

21 vs.

22 LEE PUBLICATIONS, INC., a  
23 Delaware Corporation, dba NORTH  
24 COUNTY TIMES, and DOES 1  
25 through 50,

26 Defendants.  
27  
28

Case No. 3:08cv1072-GPC-NLS

**ORDER DENYING DEFENDANT'S  
MOTION FOR  
RECONSIDERATION**

[Dkt. No. 167]

23 Pending before the Court is Defendant's motion for Reconsideration of the  
24 Court's Order of May 20, 2013. (Dkt. No. 167.) The motion has been fully  
25 briefed. (Dkt. Nos. 169, 170.) Pursuant to L.Civ.R. 7.1.d.1, the Court finds the  
26 matter suitable for adjudication without oral argument. For the reasons set out  
27 below, the Court **DENIES** Defendant's motion for reconsideration.  
28

## **I. Background**

The Court need not revisit the relevant factual background as it was thoroughly documented in this Court's May 20, 2013 Order granting in part and denying in part Defendant's motion for decertification. (See Dkt. No. 166, "Judicial Order.") In that Order, the Court affirmed certification as to the threshold issue of whether Plaintiffs, newspaper carriers employed by Defendant North County Times ("NCT"), were properly classified as independent contractors. (Judicial Order at 6.) The Court found that individual issues predominated on questions of liability for Plaintiffs' overtime, minimum wage, and rest break claims and found those claims were not amenable to class treatment. (Id.) Specifically, the Court found the issue of whether each newspaper carrier relied on substitutes or helpers prevented a determination of liability for those claims. (Judicial Order at 11-17.) On the claim for unreimbursed expenses, the Court found that the same concerns regarding substitutes and helpers were not relevant to the determination of liability. (Judicial Order at 17-20.) As such, the Court maintained class certification to the claim for unreimbursed expenses. (Id.) Defendants seek reconsideration of this Court's ruling that Plaintiffs' claim for unreimbursed expenses satisfies Rule 23 standard for class certification. (Dkt. No. 167.)

## **II. Legal Standard**

A district court may reconsider an order under either Federal Rule of Civil Procedure 59 (e) (motion to alter or amend a judgment) or Rule 60(b)(relief from judgment). Under the local rules, a party that files a motion for reconsideration of an order must set forth the material facts and circumstances surrounding the motion, including any new or different facts and circumstances that are claimed to exist which did not exist, or were not shown, upon such prior application. L. Civ. R. 7.1.i. In the Ninth Circuit, reconsideration is appropriate if the district court (1)

1 is presented with newly discovered evidence, (2) committed clear error or the  
2 initial decision was manifestly unjust, or (3) if there is an intervening change in  
3 controlling law. Sch. Dist. No. 1J, Multnomah Cnty., Or. v. ACandS, Inc., 5 F.3d  
4 1255, 1263 (9th Cir. 1993). Motions for reconsideration offer an "extraordinary  
5 remedy, to be used sparingly in the interests of finality and conservation of judicial  
6 resources." Carroll v. Nakatani, 342 F.3d 934, 945 (9th Cir.2003).

### 7 **III. Discussion**

8 Defendant makes two arguments to support reconsideration: (1) the Court  
9 committed clear error by finding individual issues would not predominate for the  
10 unreimbursed expenses claim; and (2) the Supreme Court decision in Comcast  
11 provides new authority to reconsider the decision. The Court addresses these  
12 arguments in turn.

13 To prove a claim for unreimbursed expenses, Plaintiffs must show  
14 employment by defendant, expenditures in direct consequence of the discharge of  
15 duties, and the expenditures were not reimbursed. (See Judicial Order at 17; Cal  
16 Labor Code § 2802). After a review of the Plaintiffs' evidence, the Court  
17 concluded that "[b]ased on common evidence, Plaintiffs can show the essential  
18 elements of the claim: that the carrier was an employee, incurred necessary  
19 expenses to perform his duties, and Defendant deducted those expenses from the  
20 carriers' earnings." (Judicial Order at 19.) Defendant argues there must be an  
21 individualized inquiry as to "who actually incurred the expenses: were expenses  
22 covered by the [carrier] or by some substitute or helper designated by the  
23 [carrier]?" (Dkt. No. 67-2 at 3.) Defendant over-extends its' argument that the  
24 substitute or helper issue creates individualized questions to determine liability.  
25 The Court found the Defendant's "carrier sheets" reflected the exact amount of  
26 charges the Defendant withheld from the carrier's earnings. (Judicial Order at 19.)  
27 This evidence clearly reflects costs incurred to the carrier, sufficient to show that  
28

1 common issues predominate on the question of liability for the unreimbursed  
2 expenses claim. Moreover, common proof of withholding expenses shows that the  
3 carrier was injured in fact. Accordingly, Defendant has failed to show that the  
4 Court's analysis regarding the unreimbursed expenses claim was made in clear  
5 error.

6 Next, Defendant argues the Supreme Court decision Comcast Corp. v.  
7 Behrend, 133 S. Ct. 1426 (2013), reflects a change in law that requires this Court  
8 to reconsider its' determination. In response, Plaintiffs point out that Comcast was  
9 decided two months prior to the issuance of this Court's decision and thus is not  
10 new law for purposes of reconsideration. (Dkt. No. 269 at 2.) To the extent  
11 Comcast, applies, Plaintiffs argue the Supreme Court's ruling was limited to a  
12 narrow damages issue. (Id. at 4-5.) Plaintiffs further argue that Ninth Circuit  
13 decision in Leyva v. Medline, 716 F.3d 510 (9th Cir. 2013), supports this Court's  
14 ruling that damages may be determined on a class-wide basis for the unreimbursed  
15 expenses claim. (Id. at 5-6.)

16 The Supreme Court decision in Comcast does not alter this Court's  
17 determination that damages for the unreimbursed expenses claim may be  
18 ascertained on a class-wide basis. The Comcast Court reversed an order granting  
19 class certification on the basis that the plaintiffs' damages model failed to  
20 accurately reflect the one theory of antitrust liability that had been found to meet  
21 the Rule 23 standard for certification. Comcast, 133 S. Ct. at 1433-34. Here, proof  
22 of both liability *and* damages will be based on Defendants' records. Thus, the  
23 danger the Supreme Court observed in Comcast that plaintiffs "did not isolate  
24 damages resulting from any one theory of [liability]," is not present in this class  
25 action. Id. at 1431. For this reason, the Court concludes the Comcast decision is  
26 distinguishable and fails to offer any new authority that would alter this Court's  
27 findings. Moreover, to the extent that these questions would require individual  
28

1 inquiry, “[t]he amount of damages is invariably an individual question and does  
2 not defeat class action treatment.” Leyva v. Medline Indus. Inc., 716 F.3d 510,  
3 514 (9th Cir. 2013) (citing Blackie v. Barrack, 524 F.2d 891, 905).

4 **IV. Conclusion**

5 Based on these reasons, the Court **DENIES** Defendant’s motion for  
6 reconsideration. (Dkt. No. 167.) Accordingly, the Court **VACATES** the hearing  
7 date scheduled for Friday, November 1, 2013.

8 **IT IS SO ORDERED.**

9  
10 DATED: October 31, 2013

11   
12 \_\_\_\_\_  
13 HONORABLE GONZALO P. CURIEL